

December 20, 2004
Case No. GP-301724 (2760/29)
Serial No.: 09/992,855
Filed: November 5, 2001
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— REMARKS —

A. Claims 1-8 and 10-21 were rejected under 35 U.S.C. §102(e) as anticipated by Parsa

The §102(e) rejection of claims 1-8 and 10-21 is traversed. In order to maintain this rejection, each and every element of the claims must be taught or suggested by the reference in at least as great detail as claimed. Because *Parsa* does not teach or suggest "sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination," (as claimed in claims 1, 16 and 20) this rejection must fall.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of Calif.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1989). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1990).

Parsa discloses a closed loop power control for common downlink transport channels. At most, *Parsa* discloses controlling the power level of a modem signal. In contrast, the claim requires sending a modem carrier level instruction from the communication node to adjust the modem carrier level based on the determination. Thus, *Parsa* discloses adjusting a power level, while the claim requires at least an adjustment to the modem carrier level.

With respect to claim 2, *Parsa* does not teach or disclose that the modem carrier level instruction comprises a modem carrier level parameter. At most, *Parsa* discloses that system parameters are received from a continuously transmitted BS broadcast control channel which is broadcast by all base stations. See, *Parsa*, column 7, lines 56-59. The *Parsa* parameters are the loading of all the base stations in the vicinity of the MS, their antenna characteristics, spreading codes used to spread the downlink transmitted information, timing information and other control information. See, column 7, lines 61-65. Likewise, *Parsa* does not disclose, explicitly or inherently, that the modem carrier level parameter comprises a range between one and eight bits of the modem carrier level instruction, as claimed in claim 3.

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Parsa does not disclose that the modem carrier level instruction comprises select frequency tones, as claimed in claim 4. At most, Parsa discloses that instructions are sent over the DCH downlink channel, but not that the instruction comprises select frequency tones. See, Parsa, column 9 line 58 to column 10 line 8.

With respect to claim 5, Parsa does not disclose adjusting the modem carrier level in response to the modem carrier level instruction. At most, Parsa discloses adjusting a power level, but not adjusting adjusting the modem carrier level in response to the modem carrier level instruction. Similarly, Parsa does not disclose adjusting the modem carrier level more than one time during a communication session, as claimed in claim 6, or measuring the modem carrier signal strength a single measurement at a beginning of a data communication segment, as claimed in claim 7 or a plurality of measurements, as claimed in claim 8.

Likewise, Parsa does not disclose that the prescribed level is based on a reference modem carrier level at the communication node, as claimed in claim 15. As Parsa does not disclose modem carrier levels, but only power levels, Parsa cannot disclose the claimed invention.

Because Parsa does not disclose each and every element of claims 1, 16 and 20, the §102(e) rejection should be withdrawn. Claims 2-8 and 10-21 depend directly or indirectly from claims 1 or 16, and are therefore patentable over the references for at least the same reasons.

Withdrawal of the rejections to claims 1-8 and 10-21 is requested.

B. Claim 9 was rejected under 35 U.S.C. §103(a) as unpatentable over Parsa in view of Westerlage

The §103(a) rejection of claim 9 is traversed. Claim 9 depends from 8 and indirectly depends from claim 1, and is therefore patentable over Parsa in view of Westerlage for at least the same reasons as claim 1. Withdrawal of the rejection to claim 9 is requested.

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SUMMARY

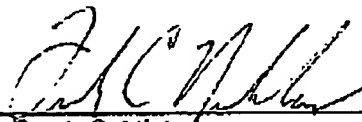
The Applicant respectfully submits that claims 1-21 fully satisfy the requirements of 35 U.S.C. §§ 102, 103 and 112. In view of the foregoing, favorable consideration and passage to issue of the present application is respectfully requested. If any points remain at issue that may best be resolved through a personal or telephonic interview, the examiner is respectfully requested to contact the undersigned at the telephone number listed below.

Dated: December 20, 2004

Respectfully submitted,
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